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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------------|
| 10/057,163 | 01/24/2002 | Scott H. Robinson | ITL.1695US (P12878) | 1704 |
| 21906 7590 09/22/2008 TROP PRUNER & HU, PC 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631 | | | EXAMINER TRAN, PHILIP B | |
| | | | ART UNIT 2155 | PAPER NUMBER |
| | | | MAIL DATE 09/22/2008 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/057,163 | Applicant(s) ROBINSON ET AL. | |
| | Examiner Philip B. Tran | Art Unit 2155 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 1008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendments

Notice to Applicant

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action (6/12/2008) is withdrawn. A new final Office action is hereby submitted as necessitated by the amendments filed on 08 February 2008.

2. This communication is in response to Amendments filed 08 February 2008. Claims 32, 39 and 45 have been amended. Therefore, claims 32-49 are pending for further examination.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 32-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cihula, U.S. Pat. Application Pub. No. US 2002/0143914 A1 in view of Cash, U.S. Pat. No. 5,481,312.

Regarding claim 32, Cihulu teaches a method comprising:

evaluating a communication network context wherein a communication network context involving information about communication media available to a device (i.e., monitoring the dynamic network information such as network topology and performance of the network and its devices and classifying the traffic to determine the types of traffic present and the devices the traffic is passing through) [see Paragraphs 0032-0035]; and

prioritizing a plurality of information items based on at least the communication network context (i.e., prioritizing traffic classifications across the network by using the dynamic network information) [see Paragraphs 0042 & 0045].

Cihulu further teaches transferring data content between two devices in the network [see Cihulu, Paragraph 0057]. Though Cihulu does not explicitly teach transferring at least one high priority information item and subsequently transferring at least one additional information item for future use, it is common sense that high priority data should have been transferred before low priority data.

Cash, in the same field of prioritizing data transmission in the network endeavor, discloses prioritization scheme for transmitting high priority items first before other items

are transmitted [see Cash, Abstract and Col. 8, Lines 17-34]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the teaching of prioritization scheme of Cash into the teaching of dynamic processing and monitoring network context of Cihulu in order to transfer data to the user in such an efficiently prioritized manner. Thus, more important items will be transmitted with higher priority to reduce the traffic congestion in the network.

Regarding claim 33, Cihulu further teaches the method of claim 32, further comprising evaluating a communication device context [see Paragraphs 0006-0007].

Regarding claim 34, Cihulu further teaches the method of claim 33, further comprising evaluating a user context [see Paragraphs 0005-0006].

Regarding claim 35, Cihulu further teaches the method of claim 34, further comprising filtering the plurality of information items based on at least one of the communication network context, the communication device context, and the user context [see Paragraphs 0025 & 0045].

Regarding claim 36, Cihulu further teaches the method of claim 34, further comprising reprioritizing information items when a change in at least one of the communication network context, the communication device context, and the user context is detected [see Paragraphs 0042-0045 & 0052-0055].

Regarding claim 37, Cihulu and Cash do not explicitly teach cancelling a planned information item transfer when a change in at least one of the communication network context, the communication device context, and the user context is detected. However, it would have been obvious to one skilled in the art to recognize that service delivery cancellation is a part of context filtering process.

Regarding claim 38, Cihulu and Cash do not explicitly teach subsequently transferring at least one additional information item for future use comprises transferring at least one information item over multiple connectivity sessions. However, it would have been obvious to one skilled in the art to recognize that multiple connectivity sessions can be implemented for transferring data in the network.

Claim 39 is rejected under the same rationale set forth above to claim 32.

Regarding claim 40, Cihulu further teaches the machine readable medium of claim 39, wherein the set of instructions, which when executed, further cause the machine to partition the plurality of information items into sets prior to transfer of the high priority information items [see Paragraphs 0035-0036 & 0042-0045].

Claim 41 is rejected under the same rationale set forth above to claim 33.

Claim 42 is rejected under the same rationale set forth above to claim 35.

Claim 43 is rejected under the same rationale set forth above to claim 36.

Claim 44 is rejected under the same rationale set forth above to claim 37.

Claim 45 is rejected under the same rationale set forth above to claim 38.

Claim 46 is rejected under the same rationale set forth above to claim 39.

Claim 47 is rejected under the same rationale set forth above to claim 43.

Claim 48 is rejected under the same rationale set forth above to claim 45.

5. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cihula, U.S. Pat. Application Pub. No. US 2002/0143914 A1 in view of Cash, U.S. Pat. No. 5,481,312 and further in view of Smith et al (Hereafter, Smith), U. S. Pat. No. 6,697,842.

Regarding claim 49, Cihulu and Cash do not teach the system of claim 46, wherein the transfer of high priority information items to a user device occurs over a wireless network connection. However, Smith, in the same field of prioritization of context information in the network endeavor as Cihulu, discloses transfer data (prioritized data) to client over a wireless network connection [see Fig. 1]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the teaching of Smith into the teaching of Cihulu and Cash in order to efficiently deliver data in the wireless network by adapting to the dynamic nature of the mobile communication environment.

6. Applicant's arguments with respect to claims 32-49 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CAR 1.136(a).

A SHORTENED STATUTORY PERIOD FOR REPLY TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE MAILING DATE OF THIS ACTION. IN THE EVENT A FIRST REPLY IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CAR 1.136(A) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT, HOWEVER, WILL THE STATUTORY PERIOD FOR REPLY EXPIRE LATER THAN SIX MONTHS FROM THE MAILING DATE OF THIS FINAL ACTION.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Tran whose telephone number is (571) 272-3991. The Group fax phone number is (571) 273-8300. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar, can be reached on (571) 272-4006.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Philip B Tran/
Primary Examiner, Art Unit 2155
Sept 18, 2008